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COUNTY OF AMADOR

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
ROBERT T. MATSUI FEDERAL COURTHOUSE

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE,

Plaintiff,

v.

JEFFERY MACOMBER, in his official
capacity as Secretary of the California
Department of Corrections and
Rehabilitation,

Defendants.

COUNTY OF AMADOR, a public
agency of the State of California,

Plaintiff,

v.

KATHLEEN ALLISON in her official
capacity as Secretary of the California
Department of Corrections and
Rehabilitation; PATRICK COVELLO in
his official capacity of Warden of
California Department of Corrections
and Rehabilitation Mule Creek State
Prison; and CALIFORNIA
DEPARTMENT OF CORRECTIONS
AND REHABILITATION,

Defendants.

Case No. 2:20-cv-02482-WBS-AC
[Consolidated with 2:21-cv-00038-
WBS-AC]

**PLAINTIFFS COUNTY OF
AMADOR AND CALIFORNIA
SPORTFISHING PROTECTION
ALLIANCE'S OPPOSITION TO
EX PARTE APPLICATION**

[Filed concurrently with:

- 1. Declaration of Christopher M. Pisano in Support of Opposition to Ex Parte Application; and*
- 2. Declaration of Erica Maharg in Support of Opposition to Ex Parte Application.]*

Date: None set
Time: None set
Dept: 5
Judge: William B. Shubb

Trial Date: April 18, 2023
Action Filed: January 7, 2021

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1 Plaintiffs County of Amador (“County”) and California Sportfishing
 2 Protection Alliance (“CSPA”) jointly submit this opposition to Defendants Jeffery
 3 Macomber, in his official capacity as Secretary of the California Department of
 4 Corrections and Rehabilitation (“CDCR”) Patrick Covello, in his official capacity
 5 as Warden of CDCR’s Mule Creek State Prison and CDCR (collectively
 6 “Defendants”) *ex parte* application to modify the Final Pretrial Order (ECF 110),
 7 and continue the April 18, 2023 trial date and all related deadlines except for the
 8 April 13, 2023 Final Settlement Conference by no less than seven weeks in the
 9 above captioned case.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 Defendants’ *ex parte* application to modify the Final Pretrial Order (ECF
 13 110), and continue the April 18, 2023 trial date and all related deadlines except for
 14 the April 13, 2023 Final Settlement Conference by no less than seven weeks does
 15 not adequately consider prejudice and inconvenience to the Court and Plaintiffs.
 16 Additionally, Defendants fail to explain how known pretrial filings could come as a
 17 surprise when the Final Pretrial Order was delayed. This also contradicts
 18 Defendants’ failure to indicate the need for any trial continuance to adequately
 19 prepare for trial at the pretrial conference on February 13, 2023.

20 **II. DEFENDANTS HAVE FAILED TO MEET THE REQUIREMENTS** 21 **FOR EX PARTE RELIEF**

22 Defendants’ *ex parte* application fails to establish that Defendants warrant *ex*
 23 *parte* relief in this instance. When considering a request to continue deadlines
 24 under Fed. R. Civ. P. 6(b)(1) and Fed. R. Civ. P. 16(e), the Court considers four
 25 factors: “(1) the ‘diligence’ of the party seeking the continuance; (2) whether
 26 granting the continuance would serve any useful purpose; (3) the extent to which
 27 granting the continuance would have inconvenienced the court and the opposing
 28

party; and (4) the potential prejudice.” *State Farm Fire & Cas. Co. v. Willison*, 833 F.Supp.2d 1200, 1211 (D. Haw. 2011) (citing *United States v. Flynt*, 756 F.2d 1352, 1358 (9th Cir. 1985) *amended by* 764 F.2d 675 (9th Cir. 1985)). Because Defendants failed to consider all four factors, *ex parte* relief should not be granted.

A. If Defendants Were Diligently Preparing for Trial, the Trial Continuance Would Not Be Necessary

Although Defendants’ *ex parte* application claims that Defendants were diligent, the circumstances surrounding this *ex parte* application indicate that Defendants were not diligently pursuing trial preparation. At the pretrial conference on February 13, 2023, Defendants did not indicate any need for a trial continuance to adequately prepare for trial scheduled to begin on April 18, 2023. Declaration of Christopher Pisano (“Pisano Decl.”) ¶2. At this time, the filing requirements prior to trial were equally available to both parties through the Court’s Standing Order, applicable Local Rules and Federal Rules of Civil Procedure. Hon. Shubb, Standing Order, notice 2 and § IV; Local Rules 250.2(c), 281(b)(12), 282(5), (7), 290; Fed. Rules Civ. Proc., Rules 52.

Now, Defendants have asserted that they were unaware of the pretrial filing requirements. ECF 111, 6:21 – 7:7. By claiming that Defendants were unaware of these pretrial requirements, Defendants implicate that they were not diligent as they were unaware of the pretrial requirements described in resources available to all parties. This also contradicts Defendants’ February 13, 2023 indication that no trial continuances were needed to adequately prepare for trial.

In addition, Defendants have not been diligent in attempting to resolve the issues related to this Final Pretrial Order. On March 29, 2023, the day that the Final Pretrial Order was received, Plaintiffs coordinated to come up with an agreeable solution and reached out to Defendants proposing a condensed timeline for the Pretrial Order. Pisano Decl. ¶¶ 5-7. Defendants did not respond to this

1 proposal until 6:11 pm on Friday, March 31, 2023, indicating that they would not
 2 agree to simply modifying the timeline and would, instead, request a continuance.
 3 Pisano Decl. ¶ 8.

4 **B. Delaying the Trial for Settlement Discussions Is Unwarranted**

5 To the extent Defendants seek a trial continuance to allow for settlement
 6 discussions, this should not be granted because Defendants have not diligently
 7 engaged in settlement discussions with Plaintiffs. Plaintiffs have repeatedly sought
 8 to engage Defendants in meaningful discussions throughout this litigation. See
 9 Maharg Decl., ¶¶ 2-3. Despite this, Defendants have stated they could not attend a
 10 settlement conference until the eve of trial and failed to respond until recently.
 11 Maharg Decl., ¶¶ 3-4. While Plaintiffs intend to engage meaningfully in settlement
 12 discussions over the next couple weeks, delaying the trial in order to do so is
 13 unwarranted because the lack of time to hold settlement discussions is a result of
 14 Defendants' failure to respond.

15 **C. Defendants Failed to Consider How The Trial Continuance Would**
 16 **Prejudice Plaintiffs and Inconvenience the Court**

17 Defendants also did not consider the impact of the trial continuance on either
 18 the Court or Plaintiffs. Moving the trial needlessly disrupts the Court's calendar
 19 especially considering that Plaintiffs have proposed modifications to the Pretrial
 20 Order that would not impact the Court's trial calendar or prejudice Defendants and
 21 Defendants' counsel already indicated that they would be ready for trial.

22 Additionally, Plaintiffs would be prejudiced by the proposed trial
 23 continuance. First, Plaintiffs have already begun preparing expert witnesses and
 24 moving the trial would require Plaintiffs to incur unnecessary costs re-preparing the
 25 same witnesses. Pisano Decl. ¶ 9. Second, trial counsel for the County is
 26 unavailable from May 15th through the end of September and would not be able to
 27 move trial as suggested by Defendants. Pisano Decl. ¶ 10; see also Declaration of
 28

Erica Maharg (“Maharg Decl.”) ¶ 5 (CSPA’s counsel testifying to additional conflicts). Third, the purpose of this lawsuit is to prevent continued violations of the Clean Water Act and delaying the trial allows continued violations and harm to County residents. Fourth, it is unreasonable to move the trial six months for a party who indicated that no trial continuance was necessary.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests the Court to deny Defendant’s *ex parte* application.

Dated: April 4, 2023

BEST BEST & KRIEGER LLP

By: /s/ Anya Kwan

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Dated: April 4, 2023

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By: /s/ Erica A. Maharg

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